IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 272 of 1997
In
SPECIAL CIVIL APPLICATION No. 7716 of 1995
WITH
CIVIL APPLICATION No. 3293 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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V A PARMAR, MAMLATDAR COMMISSIONER OF LAND REFORM - Appellant
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MRS KETTY A MEHTA for Appellant.
MR APURVA DAVE, AGP for Respondents.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/05/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant – original petitioner has filed this appeal under Clause 15 of the Letters Patent challenging the order dated 17.03.1997 passed by the Learned Single Judge of this Court in Special Civil Application No. 7716 of 1995 whereby the prayer made by the petitioner for issuance of a writ of mandamus and/or in the nature of mandamus and/or by any other writ, direction or order to the respondents to suspend the order of reversion of the petitioner dated 06.09.1995 and further direction to continue the petitioner in the post of Mamlatdar in the service of revenue department and to allow the petitioner to work as a Mamlatdar in the office of the Commissioner, Land Reform, Gujarat State,

Gandhinagar, has been rejected. The second prayer against the seniority list dated 09.03.1995 being illegal, ultra vires and bad in law, was also rejected.

2. This Court has issued notice on 26.03.1997 and in Civil Application, order of status-quo as on that day was directed to be maintained. The said order of status-quo is in operation till this date. Despite the fact that the appeal is filed in 1997 and only notice was issued on 26.03.1997, the petition has not yet been admitted nor any rule is issued.

3. It is the case of the appellant that the appellant joined the services of the State of Gujarat in Revenue Department as Clerk on 07.01.1971 and was posted in the office of Collector, Ahmedabad. The appellant passed Lower Revenue Qualifying Examination within three trials, in December 1982, and was, therefore, entitled to his original seniority of Clerk in the promotion cadre of Dy. Mamlatdar. The appellant passed the Higher Revenue Qualifying Examination as per the Govt. Resolution giving

promotion on Roster Basis to the Schedule Caste employee, the appellant being Schedule Caste employee, was considered for promotion to the post of Mamlatdar by the Government. The appellant having been considered by the Departmental Promotion Committee was promoted as Mamlatdar on 11.08.1992 on the roster point operated in August 1982. Special Civil Application No. 2224 of 1993 was preferred by some Schedule Caste persons for giving them deemed date of promotion to the post of Mamlatdar. This Court passed an order on 26.10.1994 in Special Civil Application No. 2224 of 1993 directing the Government to finalize the seniority list of Deputy Mamlatdar in the State of Gujarat and give deemed date to persons who were left out from promotion. The Court directed that the said question should be considered in accordance with the Rules. The final seniority list of Dy. Mamlatdar of the State of Gujarat was published by the Government on 09.03.1995. The said list was contrary to Rules 7 & 9 of the Lower Revenue Qualifying Examination Rules. The appellant was

reverted from the post of Mamlatdar to the post of Dy. Mamlatdar on 05.09.1995. The order itself says that the appellant was promoted when some seniors who were not placed above him in the seniority list were not eligible to be promoted and appellant was being reverted. It is this order which was challenged in Special Civil Application No. 7716 of 1995.

4. Mrs. Ketty A. Mehta, learned advocate appearing for the appellant has submitted that the reversion order is on the wrong basis inasmuch as when the Roster Point was operated in the year 1992, the only eligible persons at that time were considered and promoted. If some persons who are now found to be seniors, were not eligible, the appellant cannot be reverted to promote such persons. The reversion order is, therefore, illegal and bad in law, inasmuch as after a period of three years, promotion order given after due consideration by the DPC, cannot be set aside.

5. She has further submitted that the petition filed by

the appellant came up for hearing before the Learned Single Judge on 17.03.1997. Meanwhile, Special Civil Application No. 7158 of 1995, wherein the same seniority list of the eligible Dy. Mamlatdar was challenged came up for hearing and the same was rejected by the Learned Single Judge of this Court. It was contended that the present petition should also be rejected as it challenges the same seniority list. The appellant pointed out before the Learned Single Judge that apart from the seniority list, the appellant has raised three different contentions. It was further pointed out that as far as the list is concerned, the persons who are shown as seniors to the appellant have passed the Lower Qualifying Examination and Higher Qualifying Examination subsequent to the appellant and, therefore, they were not entitled to seniority over the appellant who passed within the prescribed period and prescribed chances. The three contentions raised before the Learned Single Judge which were not decided are as follows :-

(1)That the reversion order was passed on the basis that the appellant was promoted without roster point of Scheduled Caste in the year 1992 and at that time, some senior persons in the present seniority list were not considered because they were not eligible or they had not completed seven years' qualifying service. The appellant contended that this admission on the part of the Government shows that the persons who were left out in the year 1992 were not eligible and, therefore, they can never be considered with retrospective effect as on 1992 on roster point which was operated at that point of time in accordance with Govt. Resolution dated 31.01.1976 regarding promotion on the basis of roster of Schedule Caste persons.

(2)The appellant also contended that the order of reversion is also contrary to the direction given by this Court in its decision dated 26.10.1994 as the seniors were to be first considered on each vacancy in Roster Point and they were to be given deemed date. If such seniors were not qualified or eligible at

a particular point of time, they could not be given the deemed date of promotion in the earlier year. Without considering the said question and merely on the basis of bare seniority, the reversion orders are passed, which is contrary to the order of this Court dated 26.10.1994 passed in Special Civil Application No. 2224 of 1993.

(3)That the roster point from 31.01.1976 till year 1995 was not properly considered in accordance with law and if it was properly considered, there were 10 roster points to be operated which were not operated by the Government. Under the circumstances, the seniors who were left out have to be adjusted into the backlog of the roster point and no reversion could have been effected in accordance with law.

6. Mrs. Ketty A. Mehta has, therefore, submitted that the Learned Single Judge refused to consider the additional points on the ground that Special Civil Application No. 7158 of 1995 was dismissed. The

aforesaid points were never contended or posed in the said petition. Even the comparison of two petitions were not made and without considering the said points, the petition was dismissed. She has further submitted that the Learned Single Judge has also not considered question regarding eligibility of senior persons on the ground that the appellant has not given particulars about such seniors. The appellant says that even Govt. has not applied its mind to the said exercise and has not pointed out in the order of reversion as to against which senior persons, the appellant is being reverted. In fact, the appellant is one of the senior most persons to be reverted and, therefore, after a period of more than three years, the appellant could not have been reverted from the post without application of relevant rules regarding passing of the qualifying examination, the deemed date of promotion and operation of the roster point at a particular point of time. She has, therefore, submitted that the appeal filed by the appellant deserves to be admitted and allowed.

7. Mr. Apurva Dave, learned Assistant Government Pleader appearing for the respondents has submitted that the issue involved in the present appeal is squarely covered by the decision rendered by the Learned Single Judge in Special Civil Application Nos. 7158 & 9333 of 1995 and appeals filed against the said decisions are pending before this Court. He has further submitted that the appellant retired on 31.10.2003 and hence, since the order of reversion was stayed by this Court at the time of issuance of notice and status-quo is maintained till the appellant retired, the challenge to the said order of reversion becomes infructuous.

8. After having heard learned advocates appearing for the respective parties and after having gone through the impugned order as well as the averments made in the petition and the documents attached therewith, we are of the view that the challenge in the petition was of two fold. The first challenge was in respect of issuance of a writ of mandamus and/or

in the nature of mandamus and/or by any other writ, direction or order, whereby the reversion order of the appellant dated 06.09.1995 should be declared as illegal, ultra-vires and bad in law and the respondents may be directed not to implement the same and continue the petitioner in the post of Mamlatdar. The second challenge was against the seniority list dated 09.03.1995 which should be declared as illegal, ultra-vires and bad in law. AS far as first challenge is concerned, in view of the retirement of the appellant on 31.10.2003, the same has become infructuous and in view thereof, the second challenge to the seniority list has become merely academic. We are, therefore, of the view that the present appeal is required to be disposed of by holding that the reversion order passed against the appellant was never implemented as it was stayed by this Court and the appellant has retired as Mamlatdar and hence, there is no question of implementation of the order of reversion. Since the appellant has worked right from the date of his promotion to the Mamlatdar as Mamlatdar, whatever

benefits he has derived as Mamlatdar are not required to be recalled and hence, without going into the merits of the matter, we hold that the order of reversion passed by the respondents in the case of appellant has become inoperative since he has already retired on 31.10.2003.

9. With the aforesaid observation and direction, this appeal is accordingly disposed of.

10. Since appeal is disposed of, Civil Application does not survive and it is accordingly disposed of.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya